

HOUSE BILL NO. 645

INTRODUCED BY K. PETERSON

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A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING TESTING OF CERTAIN NEWBORNS FOR EXPOSURE TO DANGEROUS DRUGS OR ALCOHOL; ALLOWING PROSECUTION OF PARENTS IF TEST RESULTS ARE POSITIVE; CREATING A SPECIAL REVENUE ACCOUNT TO SUPPORT EXPENSES RELATED TO PREBIRTH EXPOSURE TO DANGEROUS DRUGS OR ALCOHOL; AND AMENDING SECTIONS 45-5-207 AND 46-18-235, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Requiring testing of certain newborns -- test results to law enforcement -- prosecution. (1) (a) A health care provider who attends a birth or any interested person shall request that the appropriate officials seek a search warrant to test the newborn for the presence of dangerous drugs or alcohol if the newborn exhibits symptoms that give the health care provider or interested person probable cause to believe that the newborn may have been exposed to dangerous drugs or alcohol before birth.

(b) A search warrant issued under this section authorizes the testing of the newborn's blood, urine, or meconium. The health care provider may choose the test most appropriate for detecting the presence of dangerous drugs or alcohol.

(2) If a test reveals the presence of dangerous drugs or alcohol in an amount significant enough to affect the newborn, the health care provider shall report the test results to the county attorney for review and prosecution of the newborn's parents for criminal endangerment or another appropriate crime.

(3) A parent may not be prosecuted under this section if the tests indicate the presence of legally obtained prescription drugs or drugs that may have been administered during childbirth.

(4) For purposes of this section:

(a) "dangerous drugs" means the compounds and substances described as dangerous drugs in Schedules I through V in Title 50, chapter 32, part 2;

(b) "interested person" means a health care provider not associated with the delivery but providing services to the newborn, the spouse of the birth mother, or a blood relative of the newborn's birth parents.

1 **NEW SECTION. Section 2. Prebirth exposure to dangerous drugs or alcohol -- child's right to sue.**

2 (1) A person who tested positive for dangerous drugs or alcohol at or shortly after birth may file a civil cause of
3 action against the person's birth parents for damages that may arise from the effects of the exposure to
4 dangerous drugs or alcohol. The statute of limitations for filing a civil action begins to run at the time that the
5 person reaches the age of majority.

6 (2) Damages awarded under this section must include those allowed under 27-1-317 and damages for
7 psychological and emotional distress, trauma, and attorney fees and costs.

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9 **NEW SECTION. Section 3. Special revenue account.** (1) There is an account in the state special
10 revenue fund to the credit of the department of public health and human services for payment of compensation
11 to children who tested positive at or shortly after birth for the presence of dangerous drugs or alcohol and whose
12 parent was convicted of criminal endangerment pursuant to 45-5-207(2)(b) or another crime related to the
13 exposure to dangerous drugs or alcohol.

14 (2) (a) Money must be deposited into the account pursuant to 46-18-235.

15 (b) Interest that accrues on the money in the account must be credited to the account.

16 (3) The department shall:

17 (a) account separately for the money deposited on behalf of each minor and the interest that accrues
18 on the money credited to each minor;

19 (b) pay bills submitted to the department on behalf of each minor for costs incurred for medical care,
20 psychological care, and educational needs related to the effects of the exposure to dangerous drugs or alcohol;
21 and

22 (c) when a minor attains 18 years of age, pay the balance of the former minor's money to:

23 (i) the former minor; or

24 (ii) if the former minor has been found incompetent by the district court, the former minor's guardian.

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26 **Section 4.** Section 45-5-207, MCA, is amended to read:

27 **"45-5-207. Criminal endangerment -- penalty -- disposition of fines.** (1) (a) A person who knowingly
28 engages in conduct that creates a substantial risk of death or serious bodily injury to another commits the offense
29 of criminal endangerment.

30 (b) This conduct includes but is not limited to:

1 (i) knowingly placing in a tree, log, or any other wood any steel, iron, ceramic, or other substance for the
2 purpose of damaging a saw or other wood harvesting, processing, or manufacturing equipment; and

3 (ii) for birth parents, using or having knowledge of the use of dangerous drugs or abusing or having
4 knowledge of the abuse of alcohol during pregnancy, if the use or abuse is documented by a test indicating the
5 presence of dangerous drugs or alcohol in a newborn at or shortly after birth, as provided for in [section 1].

6 (2) (a) Except as provided in subsection (2)(b), a person convicted of the offense of criminal
7 endangerment shall be fined an amount not to exceed \$50,000 or be imprisoned in the state prison for a term
8 not to exceed 10 years, or both.

9 (b) A person convicted of the offense of criminal endangerment for the use of dangerous drugs or abuse
10 of alcohol during pregnancy shall be fined an amount not to exceed \$10,000 or be imprisoned in the state prison
11 for a term not to exceed 5 years, or both.

12 (3) A fine imposed under subsection (2)(b) must be allocated as follows:

13 (a) 50% to the special revenue account provided for in [section 3]; and

14 (b) 50% to the general fund, pursuant to 46-18-235."

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16 **Section 5.** Section 46-18-235, MCA, is amended to read:

17 **"46-18-235. Disposition of money collected as fines and costs.** Except as provided in 45-5-207 and
18 61-8-726, the money collected by a court as a result of the imposition of fines or assessment of costs under the
19 provisions of 46-18-231 and 46-18-232 must be paid:

20 (1) by the clerk of district court to:

21 (a) the department of revenue for deposit into the state general fund; or

22 (b) if the fine was imposed for a violation of Title 45, chapter 9 or 10, and at the court's discretion, the
23 drug forfeiture account maintained under 44-12-206 for the law enforcement agency that made the arrest from
24 which the conviction and fine arose; and

25 (2) by a justice's court pursuant to 3-10-601."

26

27 **NEW SECTION. Section 6. Codification instruction.** [Sections 1 through 3] are intended to be codified
28 as an integral part of Title 50, chapter 19, and the provisions of Title 50 apply to [sections 1 through 3].

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